



Deception as a Condition for Cancellation of an Arbitration Award in Indonesia

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<http://dx.doi.org/10.18415/ijmmu.v8i4.2612>

Abstract

The phrase "deception" is one of the elements of the crime as a condition for the cancellation of an arbitration award, which is contained in the substance of Article 70 letter c of the Indonesia Arbitration and Alternative Dispute Resolution Law No. 30 of 1999. Elimination of explanation of Article 70 of Law No. 30 of 1999, the author sees that there is legal obscurity to the meaning of "deception" as a condition for the cancellation of an arbitration award. The norms as contained in Article 70 are the realm of criminal law, which in the settlement process is different from the realm of settlement through arbitration. This article is normative legal research with a statutory and conceptual approach. The result of this research is to explain and analyze the meaning of "deception" contained in the substance of Article 70 letter c of Law No. 30 of 1999 as a condition for the cancellation of an arbitration award. Whereas the element of "deception" which is used as a condition for the cancellation of an arbitration award in the arbitration settlement process is a criminal domain, so to prove this element must first be proven in the realm of criminal justice to obtain permanent legal force from the panel of judges. Elements of a criminal act cannot only be suspected but must be proven first.

Keywords: *Deception; Cancellation; Arbitration Award; Indonesia Law*

Introduction

In a business relationship or agreement, there is always the possibility of a dispute. Civil disputes in an agreement are cases arising from an agreement previously agreed upon by the parties. In general, trade disputes, the settlement of Agreement disputes begins with a negotiation process (bargaining process) to produce a written agreement in the trade contract. Where the trading contract itself acts as a legal basis for the parties who bind themselves. If the parties disagree about a difference of opinion, the parties can make an agreement that the dispute will be resolved through the District Court or Arbitration. If a dispute or difference of opinion is resolved through an arbitration institution, the decision has permanent legal force (final and binding).

Indonesia Arbitration and Alternative Dispute Resolution Law No. 30 of 1999 (Law No. 30 of 1999) states the parties of contract can choose alternative dispute resolution which are arbitration, consultation, negotiation, mediation, and expert judgment (Wibowo, A. M., Sukarmi, & Hamidah, S., 2019). When the parties choose arbitration, Law No. 30 of 1999 states that efforts given to dispute resolution through arbitration are the cancellation of the arbitral award that has been registered at the Central Jakarta District Court within 30 (thirty) days after the arbitration award is given to the parties. Which contains the following elements:

1. Letters or documents submitted during the examination, after the verdict has been passed, are recognized as false or declared false;
2. After the decision has been made, a decisive document is found which was hidden by the opposing party; or
3. The decision is made based on the deception carried out by one of the parties in the dispute examination.

In the legal remedy process, the Supreme Court is the last institution to file an appeal and cassation against the cancellation of the arbitration award. Given that, the arbitration award has a final and binding nature for the parties. The elimination of explanation to Article 70 Law No. 30 of 1999 by the Indonesia Constitutional Court Decision No. 15/PUU/XII/2014 states that the explanation of Article 70 Law No. 30 of 1999 is contrary to the Indonesia Constitution of 1945 and has no binding legal force. That makes the author describe the meaning contained in Article 70.

The focus of the author's discussion in this article only refers to the substance of Article 70 letter c which states: "the arbitration award was taken from the result of a deception carried out by one of the parties in the dispute examination". The meaning of the phrase "deception" is what the authors focus on in this study. Because the elements contained in the request for the annulment of the arbitration award are elements contained in the realm of criminal law.

The Article 70 Law No. 30 of 1999 cannot be released from Article 71 Law No. 30 of 1999 regarding the period for settlement of a case for the cancellation of an arbitration award submitted for only 30 days in court. That a period of 30 days cannot be decided, including if an objection is filed at the Supreme Court. This means that the explanation of Article 70 Law No. 30 of 1999 cannot be applied if the reasons for the request for cancellation must be with a court decision (criminal) related to evidence of document falsification or embezzlement and the existence of deception.

The two domains of the judiciary about the dispute resolution process due to the law that arises in the realm of criminal law and civil law are different, as for the differences in dispute resolution. An element of a criminal act cannot only be suspected but must be proven beforehand in a criminal court process which has a legal binding (*inkracht van gewisjde*) by a panel of judges. So if there is a party that applies to annul an arbitration award in a juridical manner, that party must first prove its pretext in a criminal court.

In the absence of a verdict from a criminal court that has permanent legal force (*inkracht van gewisjde*), it means that the party who requests the cancellation of the arbitration award only aims to postpone the execution of his company's guarantee. This is because the settlement process through the arbitration institution has a time limit of 180 (one hundred and eighty) calendar days to reach a dispute outside the court at low cost, short, and fast.

Whereas normatively based on Law No. 30 of 1999 has provided a time limit for requesting the cancellation of an arbitration award for parties who have chosen the path of settlement through arbitration or alternative dispute resolution, and the arbitration award has a final and binding nature for the parties.

Research Method

This paper is normative legal research, namely the process of finding legal rules, legal principles, and legal doctrine to answer legal problems faced (Marzuki, P. M., 2005). This type of research is normative, that is, it examines the meaning of the phrase "deception" in Article 70 letter c of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as one of the elements and conditions for an application to cancel an arbitration award. The research approach uses the statute approach, conceptual approach, and case approach (Marzuki, P. M., 2005).

Based on the type of research to be carried out, the basic legal materials used in this study are library materials which are classified as secondary data. The use of secondary data will primarily be aimed at general secondary data, both in the form of archives and official legal materials in government agencies. This secondary data includes various materials in the form of primary legal materials, secondary legal materials, and tertiary legal materials (Sunggono, B., 2012).

After the legal materials are grouped, then the legal materials are analyzed using grammatical, systematic, and descriptive analysis. The author collects problems regarding the meaning of the phrase "deception" as the elements and conditions for the cancellation of a complex and varied arbitration award. This problem will be analyzed in a convergent manner, thus leading to a single point of solution for various problems in the field of cancellation of arbitration awards which contain elements of criminal acts.

Research Result and Discussion

Deception is an element of the criminal act of fraud regulated in Article 378 of the Indonesia Criminal Code. The definition of deception in the Big Indonesian Dictionary is an act or word that is not honest (lie or fake) as a form of effort or tactics and tactics to trap to mislead, outsmart, or looking for profit or it can also mean deceiving (KBBI Daring, 2016). According to R. Soesilo in his book cleverness or deception is defined as a trick that is so cunning that a person with a normal mind can be deceived. A deception is enough, as long as it is quite cunning (Soesilo, R., 2006).

In the context of civil law deception, the regulation can be found in Article 1328 of the Indonesia Civil Code, states:

"Fraud is an excuse to cancel the agreement if the deception used by one of the parties is such that it is clear and obvious that the other party has not agreed if the deception was not carried out. Fraud is not condemned, but must be proven".

In cases of arbitration disputes where there are elements of deception found in clauses or the contents of letters or documents and/or other written agreements. As the letters, documents, and/or agreements are the basis of the parties as evidence in the trial process by arbitration by the parties.

Whereas there is fraud there must be deception (which is an element of deception), what is meant by deception is a series of stories (lies) that are not true, and every attitude or action that is deceptive, is not just a lie, but must be considered as deceptive. So lying is not enough to be considered a form of fraud.

Meanwhile, arbitration is a power to solve something according to policy. There are many definitions regarding arbitration by legal experts. According to R. Subekti, stated that arbitration is the resolution of problems or the termination of disputes by an arbitrator or arbitrator based on the agreement that they will submit to or comply with the decisions given by the arbitrator or the arbitrators they choose or appoint (Subekti, R., 1979). The referee or arbitrator has the duties and functions as a person or more who are selected by the disputing parties or appointed by the District Court or by the arbitration institution, to give decisions regarding certain disputes which are submitted for resolution through arbitration. Arbitration is based on an agreement in the agreement selected by the parties to resolve the dispute through the arbitration institution. Also, the arbitration clause is based on whether the arbitration clause is valid or not.

Arbitration is another form of adjudication, namely private adjudication. Settlement by arbitration shares similarities with public adjudication and shares some of its strengths and weaknesses. The dispute resolution process through an arbitration institution provides the parties with freedom, choice, autonomy, and confidentiality to the parties to the dispute.

According to Huala Adolf in his book, national arbitration is the settlement of a dispute through an arbitration body carried out in one or a country where the elements contained in it have the same nationality. Meanwhile, international arbitration is a settlement through an arbitration body that can be carried out outside or within a country of one of the disputing parties in which the elements contained therein have different nationalities from one another. (Adolf, H., 2006)

The procedure or the course of arbitration proceedings can be regulated by the disputing parties. However, if the parties do not regulate it, the procedure will be determined by the arbitration body they have appointed. If it is a national or international arbitration body appointed to settle their dispute, the procedure or proceedings will be carried out by the procedure established by the arbitration body concerned.

The Arbitration Session is held by the Arbitrator. An arbitrator is a person or more who are selected by the disputing parties or who are appointed by the District Court or by the arbitration institution, to give a decision regarding a particular dispute which is submitted for resolution by arbitration. Arbitrators are members of the Arbitration Institute. Arbitration Institutions in Indonesia there are the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (BASYARNAS).

After the arbitration proceedings proceed, the referee gives a decision according to the statutory regulations which have become the decision of the arbitrators. Making an arbitration award if the arbitrator has a single function does not cause problems, if the arbitrator is a panel, the arrangements regarding the decision-making system cannot be ignored. The theory of the decision-making system that has been put forward is a theory that has developed following the historical journey of arbitration practice from ancient times to the present

Indonesian National Arbitration Board (BANI) regulates concerning arbitrations award in their rule. The BANI's rule does not say what system decisions are regulated, but refers to article 19 of the BANI's rule, indirectly in giving decisions referring to the provisions of Articles 637 and Article 639 of Indonesia Reglement op de Rechvordering (RV).

An arbitration award has a final and binding nature, which means the award immediately becomes the first and final level decision. The arbitration award is directly binding to the parties. Against an arbitration award, legal remedies for appeal and/or cassation are closed. In the Indonesian arbitration

institution, after a decision is made through arbitration settlement, the chairman of the arbitration institution immediately submits it to the District Court for a ruling and can be executed immediately.

The nature of the arbitration award is final and binding, the parties are immediately obliged to carry out the arbitration award without delay. No excuse can be used to delay the fulfillment of the arbitration award. There is no attempt to appeal, cassation, or reconsideration. The inherent nature of final and binding in the arbitration award, starting from the time a copy of the award is submitted by the arbitration institution to the parties, and after the arbitration award is signed by the arbitrators.

If such a decision is appealed to the Supreme Court, the request for appeal must be declared unacceptable or in legal language in "NO" (niet onvanklijkeverklaard) because the arbitration award is final and binding. Dispute resolution through arbitration, the arbitration award may not be published, this is because of its confidential nature because the decision is not published. This prohibition ratio is to ensure the confidentiality of the parties' conditions to the public. The principle of a closed-door examination process and the prohibition of publishing arbitrations award aims to safeguard the image and good name of the parties in society.

The arbitration award can be published when it has the approval of the applicant and the respondent, it must not be only one of the parties who agrees. The arbitral institution has no authority to issue the results of a final arbitration award. If the arbitration institution publishes an arbitration award without the consent of the two parties to the dispute, then such action can be considered as an act that exceeds its authority. Such action can be categorized as unlawful conduct because it has defamed the party's good name.

In dispute resolution through an arbitration institution, no legal effort is provided. Law No. 30 of 1999 provides an attempt to cancellation the arbitration award. The terms used as an application for an arbitration cancellation are contained in the substance of Article 70 of Law No. 30 of 1999 which contains elements:

1. Letters or documents submitted during the examination, after the arbitration award has been passed, are recognized as false or declared false;
2. After the arbitration award is made, a decisive document is found, which is hidden by the opposing party, or;
3. The arbitration award was taken based on the deception carried out by one of the parties in the dispute examination.

Requirements for the application to cancel an arbitration award can be accepted if it contains the elements mentioned above. The procedure for requesting the cancellation of an arbitration award for parties objecting to a decision by the arbitration institution, after receiving the result of the arbitration award from the arbitration institution that has been registered with the District Court within 30 (thirty) days from the date the award is pronounced. An application for the cancellation of an arbitration award is submitted in writing to the Chairman of the District Court. A request for cancellation that has been submitted will be examined by the District Court whether the submitted application is based on the substance of Article 70 Law No. 30 of 1999 or not.

The discussion which is the main point of the author is the meaning of the phrase "deception" in Article 70 letter c of Law No. 30 of 1999 which is one of the requirements for the application to cancel an arbitration award. Grammatical deception is grammatical deception. Where the meaning of the word undergoes a process of affixation, reduplication, composition, or sentenceization. The meaning of the

grammatical itself is a word that changes according to the context (about the situation, namely a place, time, and language usage) of the wearer.

Meanwhile, lexically it is a trick based on the real or true meaning. Deception is deceptive actions that can be used to pave the way for false impressions and false appearances and reinforce those impressions. A trick alone is sufficient, the law often refers to the plural for the singular meaning. A normal act, which does not have a deceptive nature is not a trick.

Law No. 30 of 1999 is not explicitly explained deception. Deception is an element contained in a general criminal act of Article 378 of the Indonesia Criminal Code. The settlement process is also different from cases in the realm of civil law. Deception in the realm of civil law is contained in Article 1328 of the Indonesia Civil Code as a reason for cancellation of an agreement due to fraud, if fraud is used by one of the parties so that it is clear that the other party will not agree without trickery. Deception cannot only be guessed at but must be proven.

Likewise, with the writer's understanding of Article 70 letter c Law No. 30 of 1999 in particular, that the conditions submitted as an application for the annulment of an arbitration award by the party objecting to the arbitration institution's decision must first prove the allegations in the realm of the general court, to prove whether the argument of the ruse is true or not. And is proven by a court decision that has permanent legal force (*inkracht van gewisjde*) by the panel of judges in criminal justice.

As long as the applicant for the cancellation fails to show that there is a court decision with permanent legal force regarding the argument of deception, the judge must legally reject the request for cancellation of the arbitration award. This will be based on the nature of the arbitration award which is final and binding.

There is no legal effort for appeal or cassation in the cancellation of an arbitration award, as based on Indonesia Jurisprudence No. 1/Yur/Arbt/2018, states against a request for cancellation of a national arbitration award, a legal effort cannot be submitted to the Supreme Court. An appeal to the Supreme Court against the decision of the District Court that rejects the request for annulment of the arbitration award must be declared unacceptable.

Article 72 paragraph (1) of Law no. 30 of 1999 stated that the request to cancel the arbitration award was submitted to the district court. Meanwhile, in paragraph (4) of the same Article, it is stipulated that the decision of the district court can be appealed to the Supreme Court. In the explanation of Article 72 paragraph (4) Law No. 30 of 1999, it is explained that what is meant by appeal is only against canceling the arbitration award as referred to in Article 70 Law No. 30 of 1999.

The meaning of deceptive phrases in Article 70 letter c of Law No. 30 of 1999 states the deception is actions that are carried out in such a way that the act creates a belief or belief in the truth of something to another person. These deceptions are not words but deeds or actions. The explanation of Article 378 of the Indonesia Criminal Code states deception is an action that can be witnessed by other people, whether accompanied or not accompanied by a statement, using which the act creates a belief in something or hope for other people, even though he realized that it was not there. (Lamintang, P. A. F., 1985).

The concept (elements) of deception in dispute resolution through arbitration institutions and alternative dispute resolution as a condition for cancellation of an arbitration award, violation of contractual rights results in compensation obligations as a consequence of default as stipulated in Article 1236 of the Indonesia Civil Code (for the achievement of providing something) and Article 1239 of the Indonesia Civil Code (for the achievement of doing something).

That an element of a criminal act cannot only be suspected but must be proven. The applicant in an attempt to cancellation the arbitration award must be able to prove in advance the existence of deception using a criminal court decision. However, during the examination process, there was not a single piece of evidence submitted by the applicant in the form of a Criminal Court decision that proved the existence of deception carried out by the Respondent. If there is no evidence, the judge cannot decide whether there has been deception or not in making the arbitration award as argued by the applicant.

But to prove the elements of a criminal act in the general court takes quite a long time. Meanwhile, the process of applying to the cancellation of Law No. 30 of 1999 provides a time limit on the process of submitting a request to cancel an arbitration award. This is normatively regulated in Article 71 of Law no. 30 of 1999 states "An application for cancellation of an arbitration award must be submitted in writing within 30 (thirty) days from the day of submission and registration of an arbitration award to the Clerk of the District Court". There is a period in this Article for submitting an annulment of an arbitration award, namely 30 days from the submission and registration of the arbitral award.

So, the request for cancellation of an arbitration award according to the elements of Article 70 letter c Law No. 30 of 1999 in particular, submitted by an applicant who objected to the arbitration institution's award as long as it was not confirmed in general criminal justice and obtained permanent legal force (*inkracht van gewijsde*) by the panel of judges. The judge is obliged to reject the request for cancellation of the arbitration institution's award, and it is only used by the applicant who objected to postponing the execution of his performance obligation after the arbitration award decision was made.

Conclusion and Suggestion

The phrase "deception" in Article 70 letter c Law No. 30 of 1999 can be interpreted as a series of misleading acts, which can lead to false arguments and misrepresentations and force people to accept them. The existence of falsehood or deception must first be proven in a judge's decision in a criminal court to obtain permanent law enforcement (*inkracht van gewijsde*). According to the Indonesian Dictionary, it can be interpreted as, dishonest acts or words (*lie or fake*) as a form of effort or effort, ploys and tactics to trap to mislead, outsmart, or seeking profit or it could mean deceiving. Deception in Indonesian legislation is regulated in the elements of the criminal act of fraud, Article 378 of the Indonesia Criminal Code, Article 1328 of the Indonesia Civil Code (*disability of will*), and deception in Article 70 letter c Law No. 30 of 1999 as one of the conditions for the cancellation of an arbitration award.

In civil law problems, an element of a criminal act has a different domain for its resolution. An element of a criminal act cannot only be suspected but must be proven in the litigation process in criminal justice and must be decided incrementally by the judge who decides the existence of the criminal act of fraud. The stage of proving a criminal case also takes a long time, starting from the stage of investigation, prosecution, trial, and decision.

The elements of deception in Article 70 letter c of Law No. 30 of 1999, it is true that it is one of the conditions for the cancellation of an arbitration award used by a party that loses or does not accept the existence of an arbitration award. The elimination of the explanation of Article 70 Law No. 30 of 1999 by the Indonesia Constitutional Court decision No.15/PUU-XII/2014 is correct. Because the substance of Article 70 Law No. 30 of 1999 is clear, that an element of cancellation of an arbitration award that contains elements of a criminal act must be proven in a criminal court first. As long as the applicant who submits the cancellation of the arbitration award cannot show evidence of the final decision from the court, then it is only used for the cancellation applicant to postpone the execution of the applicant for the cancellation of the award. In practice so far all requests for cancellation of an arbitration award have

never included a court decision which proves that there is a reason used as the basis for the cancellation of the arbitration award is requested.

It is hoped that the future panel of judges at the District Court level will reject the request to cancellation the arbitration award submitted in the District Court without being proven beforehand in the general criminal court. So that the legal certainty of the parties who choose to settle them through the arbitration institution can be guaranteed freedom in determining dispute resolution without any interference from the District Court.

References

Books and Journals

- Adolf, H. (2006). *Hukum Perdagangan Internasional*. Jakarta: Raja Grafindo Persada.
- Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan dan Kebudayaan Republik Indonesia. (2016). *KBBI Daring*. (Online). Retrieved from <https://kbbi.kemdikbud.go.id/>
- Budiono, A.R. (2005). *Pengantar Ilmu Hukum*. Malang: Bayumedia Publishing.
- Harahap, M. Y. (2006). *Arbitrase ditinjau dari Reglemen Acara Perdata (RV), Peraturan dan Prosedur BANI, International Center for the Settlement of Investment Dispute (ICSID), UNCITRAL Arbitration Rules, Convention on the Recognition and Enforcement for Foreign Arbitral Award, Perma No. 1 Tahun 1990*. Jakarta: Sinar Grafika.
- Lamintang, P.A.F. (1989). *Delik-Delik Khusus Kejahatan-Kejahatan Terhadap Harta Kekayaan*. Bandung: Sinar Baru.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta: Kencana.
- Soesilo, R. (1996). *KUHP Serta Komenta-Komentarnya Lengkap Pasal demi Pasal*. Bogor: Politea.
- Subekti. (1979). *Arbitrase Perdagangan*. Bandung: Bina Cipta.
- Sunggono, B. (2010). *Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada.
- Wibowo, A. M., Sukarmi, & Hamidah, S. (2019). Analisis Yuridis Kewenangan Penyelesaian Sengketa Pembiayaan Konsumen di Indonesia. *Legality: Jurnal Ilmiah Hukum*, 27(1), 41-53. <https://doi.org/10.22219/jihl.v27i1.8957>

Indonesia Laws and Legislations

- The Indonesia Civil Code.
- The Indonesia Criminal Code.
- The Indonesia Reglement op de Rechvordering (RV).
- The Indonesia Arbitration and Alternative Dispute Resolution Law No. 30 of 1999.
- The Indonesia Jurisprudence No. 1/Yur/Arbt/2018.
- The Indonesia Constitutional Court Decision No. 15/PUU/XII/2014.
- The BANI Arbitration Rules of 2018.

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